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Attorneys for Defendants
WELLPATH MANAGEMENT, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ALAMEDA COUNTY MALE PRISONERS
And Former Prisoners, DANIEL GONZALEZ,
et al. on behalf of themselves and others
similarly situated, as a Class, and Subclass;
ALAMEDA COUNTY FEMALE
PRISONERS And Former Prisoners, JACLYN
MOHRBACHER, ERIN ELLIS, DOMINIQUE
JACKSON, CHRISTINA ZEPEDA, ALEXIS
WAH, AND KELSEY ERWIN, et al on behalf
of themselves and other similarly situated,

Plaintiffs,

v.

ALAMEDA COUNTY SHERIFF'S
OFFICE, ALAMEDA COUNTY, Deputy Joe,
Deputy Ignont (sp) Jane ROEs, Nos. 1 – 25;
WELLPATH MANAGEMENT, INC., a
Delaware Corporation (formerly known as
California Forensic Medical Group) a
corporation; its Employees and Sub-
Contractors, and Rick & Ruth ROEs Nos. 26-
50; **ARAMARK CORRECTIONAL**
SERVICES, LLC, a Delaware Limited
Liability Company; its Employees and Sub-
Contractors, and Rick & Ruth ROES Nos.
51-75,

Defendants.

Case No.: 3:19-cv-07423 JSC

**DECLARATION OF PETER G.
BERTLING IN SUPPORT OF
PARTIES JOINT STATEMENT
OF DISCOVERY DISPUTE
RE: INTERROGATORY
RESPONSES DATED
SEPTEMBER 28, 2023**

Action Filed: November 12, 2019
Judge: Hon. Jacqueline Scott Corley
Cttrm: E—15th Floor

3:19-cv-07423 JSC

**DECLARATION OF PETER G. BERTLING IN SUPPORT OF PARTIES JOINT STATEMENT
OF DISCOVERY DISPUTE RE: INTERROGATORY RESPONSES DATED SEPTEMBER 28, 2023**

1 I, Peter G. Bertling declare:

2 1. I am an attorney licensed to practice before all Courts of the State of California
3 and before this District Court. I am the owner of Bertling Law Group, counsel of record
4 for Defendant Wellpath in this action. The facts set forth in this declaration are based on
5 my personal knowledge.

6 2. On September 18, 2023, I personally attended the deposition of James Mallett
7 at the Santa Rita Jail in Dublin, CA. This was the second session of Mr. Mallett's
8 deposition. His deposition was continued in order to accommodate Ms. Huang's
9 scheduling needs. I attended this deposition in person because Ms. Huang informed
10 defense counsel that she would be attending the deposition in person. Earlier in the
11 litigation, defense counsel agreed that whenever Ms. Huang represented that she would
12 be attending her client's deposition in person, one of the defense counsel should attend
13 the deposition in person as well in order to protect the integrity of the deposition process
14 and ensure Ms. Huang did not improperly coach her client.

15 3. Mr. Mallett's deposition was scheduled to start at 10:00 a.m. Before the
16 deposition, Ms. Huang insisted that she be able to meet with her client or she would not
17 allow him to be deposed. The correctional officer, Deputy Snow, who escorted Mr.
18 Mallett to his deposition, informed Ms. Huang that an attorney meeting had not been
19 authorized and we needed to move forward with the deposition. Ms. Huang again stated
20 the deposition would not go forward unless she was allowed to meet with her client. I
21 informed Ms. Huang she should have met with Mr. Mallett during the intervening months
22 that had passed since the first session of his deposition which took place on August 17,
23 2022. Ms. Huang told me to "fuck off" and called me a "privileged, white male
24 supremacist" who discriminated against and disrespected her because she was an Asian
25 female. She also asked me how I could sleep at night when I represented a company like
26 Wellpath.

27 4. Ms. Huang ordered Deputy Snow to contact someone that could approve of her
28 predeposition meeting with Mr. Mallett or else the deposition would not go forward. I

3:19-cv-07423 JSC

1 am not certain with whom Deputy Snow spoke, but Ms. Huang was given permission to
2 speak with Mr. Mallett for 15 minutes before his deposition started. The deposition then
3 started an hour late at 11:00 a.m.

4 5. Ms. Huang claims that I was rude to Mr. Mallett during his deposition and
5 constantly interrupted him and her when they were speaking. Attached as Exhibit A is a
6 true and accurate copy of the transcript of Mr. Mallett's deposition, which I had
7 expedited for the purposes of this dispute. The deposition transcript establishes I was
8 respectful to everyone during deposition and, at all times, my behavior was professional
9 and complied with the rules of professional responsibility.

10 6. The deposition notice of Timothy Phillips was served on July 13, 2023 and
11 scheduled to take place in person at Ms. Huang's office on September 19, 2023, at 10:00
12 a.m. As I was travelling to the deposition, I received an email from Ms. Huang which
13 indicated the deposition had to be taken remotely. I would not agree to a remote
14 deposition knowing that Ms. Huang would be personally present with Mr. Phillips, and
15 because I had a number of hardcopy documentary exhibits prepared to discuss with Mr.
16 Phillips. When I arrived at her office, Ms. Huang refused to let me in the office. I then
17 informed all counsel the deposition would not go forward and I would bring the matter to
18 the attention of Judge Corley. I then left Ms. Huang's office and walked back to the
19 BART station. As I was about to leave the BART station, I received a call from Ms.
20 Huang and she informed me the deposition could go forward if I agreed to certain rules of
21 decorum. I informed her it was not necessary for me to agree to her rules because I had
22 always acted professionally during her client's depositions and would continue to do so.
23 The deposition then went forward without incident, other than learning Mr. Phillips had
24 never reviewed, nor was aware of any of the discovery that Ms. Huang had served on his
25 behalf.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of America
2 and the State of California that the forgoing is true and correct and that if called to do, I
3 could and would competently testify thereto. Executed on September 28, 2023, at Santa
4 Barbara, California.

5 /s/ Peter G. Bertling
6 Peter G. Bertling
7 Declarant
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALAMEDA COUNTY MALE PRISONERS, et al.)	Case No.:
)	3:19-CV-07423-
Plaintiffs,)	JSC
)	
vs.)	
)	
ALAMEDA COUNTY SHERIFF'S OFFICE, et al.)	
)	
Defendants.)	
_____)	

VOLUME 2 OF THE
DEPOSITION OF JAMES ERIC MALLET
SEPTEMBER 18, 2023
TAKEN REMOTELY VIA ZOOM

ALVARADO COURT REPORTERS

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Natie Flores Alvarado, CSR No. 9016
23-5837

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VOLUME 2 OF THE DEPOSITION OF
JAMES ERIC MALLETT, taken remotely via Zoom on
behalf of Defendant, Wellpath Management, Inc.,
commencing at 11:00 A.M., on Monday,
September 18, 2023 before Natie Flores
Alvarado, CSR 9016, pursuant to Notice.

APPEARANCES OF COUNSEL:

For the Plaintiff:

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For the Defendant: Wellpath Management, Inc.:

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1 APPEARANCES OF COUNSEL (Continued)

2
3 For the Defendant: Alameda County Sheriff's
4 Office, et al.:

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11
12 For the Defendant: Aramark Correctional
13 Services, LLC:

14 MORGAN, LEWIS & BOCKIUS, LLP
15 BY: Charles J. Reitmeyer, Esq.
16 1701 Market Street
17 Philadelphia, PA 19103
18 (215) 963-5320
19 charles.reitmeyer@morganlewis.com

20 Also Present:

21 Deputy D. White
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WITNESS: JAMES ERIC MALLETT

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EXHIBITS

(No exhibits offered.)

INFORMATION REQUESTED

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QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

(None.)

1 MONDAY, SEPTEMBER 18, 2023

2 11:00 A.M.

3 -- ** --

4
5 JAMES ERIC MALLETT,

6 The Witness herein, having been first
7 duly administered an oath remotely, was
8 examined and testified as follows:

9
10 EXAMINATION

11 BY MR. BERTLING:

12 Q Mr. Mallett, good morning. Thank you for
13 being here this afternoon -- or, excuse me, this
14 morning.

15 Do you recall I participated in your
16 deposition back on August 17, 2022?

17 A Yes, sir.

18 Q Have you had a chance to review the
19 transcript of your deposition that you previously
20 gave in this case?

21 A Yes.

22 Q So have you actually seen the deposition
23 transcript of your prior testimony?

24 MS. HUANG: Did you get a copy of the
25 transcript?

1 THE WITNESS: Oh, no. No.

2 Q BY MR. BERTLING: Okay. So that's why I
3 was just trying to clarify.

4 You were deposed on August 17th, and your
5 testimony was put into a transcript. It's my
6 understanding you have not seen that transcript; is
7 that correct?

8 MS. HUANG: I believe it was July 17th.

9 MR. BERTLING: No. It was August 17, 2022.

10 MS. PETERS: I apologize for interrupting.
11 We're having a real hard timing hearing the witness.

12 Q BY MR. BERTLING: Okay, you're going to
13 have to speak up, Mr. Mallett. Okay?

14 A Yes, sir.

15 Q Okay. Have you reviewed any of your
16 medical records that were generated while you were
17 an incarcerated person here at the Santa Rita jail?

18 A What do you mean review them? I've seen
19 them, yes. I have copies of them.

20 Q Where do you keep the copies of the
21 medical records?

22 A In my cell.

23 Q And what medical records do you have?

24 A Just like the inmate request forms, the
25 medicals requests, the records as far as the doctors

1 I've seen when I need an MRI and the results of the
2 MRI, stuff like that.

3 Q Do you know if you have a complete copy of
4 the medical records here at Santa Rita jail
5 regarding your treatment and care?

6 A I don't know if I have all of them, no. I
7 have what they gave me.

8 Q When did you request your medical records?

9 A I've done it several times. I don't know
10 the exact dates, but I had my legal lawyers do it,
11 and I had Yolanda do it. Both lawyers had requested
12 copies.

13 Q The records that you currently have, are
14 they in your cell?

15 A Yeah. Yeah.

16 Q That's what I'm just trying to find out.
17 You do have copies of your records in your cell
18 currently; is that correct?

19 A Yes, sir, whatever they sent me.

20 Q When is the last time you can recall
21 requesting a copy of your medical records?

22 A Probably about -- I don't know, around six
23 months ago.

24 Q What was the purpose of requesting your
25 medical records six months ago?

1 A Because my lawyer wanted to see them.

2 Q Did you actually review those medical
3 records?

4 A Yes. When they sent them, I seen them.

5 Q When you reviewed the medical records did
6 you see anything in those records that you
7 personally believed was inaccurate?

8 A I mean, as far as the medical treatment,
9 yes, a lot of it.

10 Q So what did you believe was inaccurate
11 about the medical treatment that was documented in
12 your medical records?

13 A They have claimed that they have spoke to
14 me several times about my ACL, and I never went to a
15 meeting to see no doctor. Or I did go, but it
16 wasn't the treatment he said he gave me as far as --

17 They said they gave me several braces and
18 all this stuff. I have one knee brace in my cell,
19 and then -- I forgot his name, Baumgartner
20 (phonetic) or something like that, he previously
21 said he gave me treatment that I required for my
22 knee, which is -- They only gave me -- He only gave
23 me a sleeve, ACL sleeve or whatever it's called.

24 My knee constantly pops out of place, and
25 there's a certain brace that's needed. But when I

1 ask for this brace, he denies me. He tells me the
2 County won't allow it, yet you allow people with
3 crutches, canes, wheelchairs. So how can they deny
4 me this knee brace? I've had the knee brace in
5 custody before. I came into prison with it on my
6 leg, and then it got took. So I know it's allowed,
7 but they keep denying me.

8 My knee is bone on bone, and them just
9 giving me a sleeve, it's not the same thing. And he
10 knows I need certain medical attention for this ACL,
11 and there's always an excuse of, "You can't have the
12 operation." "You can't have this," and "You can't
13 have that."

14 Q What operation are you talking about?

15 A The knee replacement. The ACL, MCL,
16 joint -- Because I have no cartilage in my knee, no
17 ACL, no MCL. And they're supposed to fix it.

18 Q Who has told you that you can't have that
19 surgery?

20 A The doctor, Dr. Rosenbaum (phonetic) or
21 whatever his name is.

22 Q When has he told you that? When is the
23 last time he told you that?

24 A The last time I saw him. Every time I see
25 him, I ask for it.

1 Q When is the last time you saw him and he
2 told you that?

3 A I can't recall an exact date, but it was
4 probably three, four months ago.

5 Q Has he given you an explanation regarding
6 why you can't have the surgery?

7 A At first it was because the Covid thing.
8 He said with Covid, the hospital shut down. Then
9 once Covid was over, he just said the County is not
10 going to pay for it. I have to get it the next
11 place I go.

12 And when I asked for treatment as far as
13 the brace goes, he also said that I couldn't have
14 that brace because --

15 Q Now, I'm not talking about the brace. I'm
16 talking about the surgery.

17 A Yeah.

18 Q We'll talk about the brace in a moment.

19 A Okay.

20 Q But I'm just trying to find out, has this
21 doctor explained to you why you can't have the
22 surgery while you've been incarcerated here at the
23 Santa Rita jail?

24 A Yes. He said that Wellpath or Alameda
25 County will not pay for it.

1 Q Did he indicate to you why Wellpath would
2 not pay for it?

3 A No. He just told me they won't pay for
4 it.

5 Q I want to focus for just a moment on the
6 brace. Have you ever had a brace while you've been
7 incarcerated at the Santa Rita jail?

8 A I had a sleeve.

9 Q Can you please describe the sleeve for me.

10 A It's like a little rubbery, flexible
11 thing. It has no hinges, no screws, nothing,
12 nothing to stop the knee from popping out of place.

13 Q Who is the first doctor that ever
14 prescribed a brace for you?

15 For your left leg; is this correct?

16 A Yes, sir.

17 MS. HUANG: Objection. At any time or any
18 specific time?

19 MR. BERTLING: At any time.

20 Q Who is the doctor that first prescribed
21 the brace for you?

22 A First doctor? I can't recall his name.
23 I've had several operations.

24 Q So, actually, I want to back up a little
25 bit.

1 When were you first injured in your left
2 knee?

3 A The first injury was in '97.

4 Q What was the nature of that injury?

5 A A torn ACL, a torn MCL.

6 Q How did you tear those ligaments?

7 A Sports.

8 Q Where did you get treatment for those torn
9 ACL and MCL initially?

10 A When I first went to jail. I was
11 incarcerated the first time I got it.

12 Q Did you sustain the injuries while you
13 were incarcerated playing ball during incarceration?

14 A I tore it more when I was in jail playing
15 on concrete. I fell on the basketball court at
16 jail, and that's when they took me to the doctor and
17 told me I had swelled up and I could get an
18 operation. I got it when I was at Tehachapi.

19 MS. PETERS: I'm sorry, I'm having a -- I'm
20 still having a hard time hearing the deponent.

21 Mr. Mallett, can you lean forward
22 toward -- When you lean forward we can hear you, but
23 when you're just sitting straight up, we're having a
24 hard time hearing you.

25 MS. HUANG: There's also background noises

1 here.

2 MS. PETERS: Uh-huh.

3 Q BY MR. BERTLING: Mr. Mallett, when were
4 you incarcerated in Tehachapi and injured your ACL
5 and MCL?

6 A They sent me to Corcoran, which is the
7 medical hospital in prison, and that was in 2007,
8 ten years later.

9 Q Ten years after injuring yourself you were
10 sent to Corcoran for treatment?

11 A Yes, Corcoran State Prison for treatment,
12 yes.

13 Q What type of medical treatment, if any,
14 did you receive for your ACL and MCL before you were
15 sent to Corcoran?

16 A Nothing. I hadn't -- It wasn't bothering
17 me. I played basketball and, I guess, aggravated it
18 or whatever.

19 Q What type of medical treatment did you
20 receive for your left knee at Corcoran?

21 A They did a microscopic surgery, just a
22 little minor cut, and re-attached the ACL.

23 Q Was that in 2007?

24 A Yes, sir.

25 Q After that surgery were you placed on any

1 kind of brace or sleeve?

2 A Yeah. They gave me a -- First I had a
3 demobilizer, and it turned into a regular knee brace
4 to turn it, so where it's not just straight. And
5 they let me keep that.

6 Q And this is while you were incarcerated at
7 Tehachapi, or had you been transferred to another
8 place?

9 A I had been transferred to Salinas Valley,
10 I believe.

11 MS. HUANG: So from Corcoran you went to
12 Salinas Valley?

13 THE WITNESS: Yes.

14 MS. HUANG: And you got the demobilizer when
15 you were at Salinas?

16 THE WITNESS: I got the demobilizer from the
17 hospital, when I got out of the hospital. And they
18 just let me keep it.

19 Q BY MR. BERTLING: After having surgery at
20 Corcoran in 2007, did you have any other surgery on
21 your left knee?

22 A Yes. I had another one in 2012.

23 Q Where were you incarcerated at that time?

24 A In 2012 I was incarcerated at, I believe,
25 Kern.

1 Q What was the nature of the surgery --

2 A Delano, I believe. I was at Delano.

3 Q Did you have the surgery while you were
4 incarcerated at Delano in 2012?

5 A Yes, sir.

6 Q What was the surgery that you had done
7 there?

8 A Reconstruct the knee. Cut it open and get
9 a graft.

10 Q Were you hospitalized as a result of that
11 surgery?

12 A Yes. I was hospitalized for several days.

13 Q Do you recall the name of the hospital
14 where that surgery was performed?

15 A No. Something Salinas.

16 Q Was it in Delano, somewhere in Delano?

17 A No. Like Bakersfield, I believe.

18 Q Do you recall the name of your surgeon?

19 A No. Some Indian dude, so it was a real
20 funny name.

21 Q And when you were transferred back to the
22 facility, to the jail after having that surgery, did
23 you have any kind of brace or sleeve?

24 A Yes. They gave me, again, a demobilizer.
25 It was black, and you can lock it to where you don't

1 move and you keep the leg straight. Or you can
2 unlock it and just keep the metal hinges on the
3 side.

4 Q When is the next time you had any surgery
5 on your left knee, if at all?

6 A In 2014 I had another surgery.

7 Q What was that surgery, Mr. Mallett?

8 A Same thing. They reconstructed the ACL,
9 MCL. They tried to put a cartilage in there and it
10 didn't take, so they did another graft.

11 Q Did you have an understanding of why it
12 didn't take?

13 A No. They said it didn't take. They said
14 the cartilage didn't take. I will need a knee
15 replacement, like, in five years.

16 Q Where did you have the surgery performed
17 in 2014?

18 A Stanford Medical.

19 Q Do you remember the name of your surgeon?

20 A No. He was from U.S. Health Works. I was
21 working for the Oakland Coliseum, and their
22 insurance company sent me to U.S. Health Works when
23 I received the surgery.

24 Q Were you incarcerated in 2014?

25 A No, sir, I was working.

1 Q Who was your employer?

2 A Oakland -- The Oracle Arena. I was
3 working for the Oracle Arena at the time.

4 Q What did you do there?

5 A Maintenance.

6 Q When you say you went to Stanford, are you
7 talking about the medical center in Palo Alto, or
8 some other facility that was like a satellite
9 facility?

10 A It was -- I don't think it was the school.
11 It was some Stanford outside medical center.

12 Q Do you recall the name of your surgeon?

13 A No, sir.

14 Q Did you receive any kind of brace, sleeve,
15 or physical therapy after the surgery in 2014?

16 A Yes, sir.

17 Q What did you receive?

18 A They gave me this -- I had this machine.
19 You got to put ice in it and wrap your leg up in it.
20 And then there was another machine. They gave me,
21 like, two different machines. And the other one
22 was, like, electrical vibration. I had to wrap my
23 knee up, put these prongs on it, and you can put the
24 level up high, and it sends electricity through your
25 leg. Then they gave me another knee brace like the

1 football players wear.

2 Q And did they give you or recommend for you
3 any type of physical therapy?

4 A Yes. I had done physical therapy three
5 times a week.

6 Q Do you recall where you got that physical
7 therapy?

8 A At U.S. Health Works.

9 Q How long did you receive physical therapy
10 three times a week, if you can recall?

11 A At least six months later. Then I was
12 ready to go back to work.

13 Q After you did the surgery in 2014, were
14 you given any kind of medication to address the pain
15 and swelling?

16 A Yes.

17 Q What kind of medication did you take?

18 A They put me on Norco.

19 Q Norco?

20 A Yeah, something like that. Some pain
21 medication. It's a yellow pill.

22 Q How often did you have to take that pain
23 medication?

24 A They gave it to me -- It was three times a
25 day, I think.

1 Q How long did you require that medication
2 three times a day?

3 A Well, I was on it when I was -- They put
4 me on it when I received the injury, all the way
5 until they took me off in 2015 or something. So I
6 was on it for, like, a year and some change.

7 Q Were you prescribed any other medication,
8 for example, a steroid or any other kind of
9 medication to help address your knee?

10 A No, sir, not to my knowledge.

11 Q After 2014 were you incarcerated again?

12 A Yeah, in, like, 2017.

13 Q And it's my understanding that in February
14 of 2017 you were incarcerated here at the Santa Rita
15 jail; is that correct?

16 A I believe so.

17 Q And at that time who was providing you any
18 kind of medical treatment for your left knee?

19 A Nobody.

20 Q At that time were you having any problems
21 with your left knee in February of 2017?

22 A No, sir.

23 Q Would I be correct, Mr. Mallett, if I say
24 that 2014 was the last time you had surgery
25 performed on your left knee?

1 A That was the last time.

2 Q Have you ever been convicted of or pled
3 guilty to a felony?

4 A Yes, sir.

5 Q Could you please identify what felony or
6 felonies you've been convicted of or pled guilty to.

7 A In 1997 I pled guilty to involuntary
8 manslaughter. In 2017 I pled guilty to --

9 MS. HUANG: Wait. In 2017 you pled guilty?

10 THE WITNESS: Yeah. In 2017 I pled guilty to
11 receiving stolen property, grand larceny. And in
12 2023 I just pled guilty to involuntary manslaughter
13 again.

14 Q BY MR. BERTLING: Was this for a different
15 person?

16 A Yes.

17 Q Do you have an understanding, Mr. Mallett,
18 of how long you're going to be incarcerated?

19 A Yeah. I just pled guilty to nine years.

20 Q Do you understand where you're going to be
21 housed during that time?

22 A Wherever CDC sends me. I have no idea
23 where I'll be housed.

24 Q But it's your understanding that you're
25 going to serve nine more years, or is there going to

1 be credit for time served? If you know. I don't
2 want you to guess.

3 A Credit for time served.

4 Q When is the last time --

5 MS. HUANG: You're going to get credit from
6 2019?

7 THE WITNESS: No. I just got credit from
8 2020 -- They gave me, like, good time credit, so I
9 don't know how much time I'll actually get. I'll
10 get sentenced on the 25th of this month.

11 Q BY MR. BERTLING: So on September 25th you
12 will be sentenced?

13 A Yes, sir.

14 Q Did you enter into some type of plea
15 agreement?

16 A Yes, sir.

17 Q And what was the nature of that plea
18 agreement?

19 A No contest.

20 Q When is the last time you were transferred
21 to the Santa Rita jail?

22 MS. HUANG: Objection. Vague.

23 Q BY MR. BERTLING: So how long have you
24 been in the Santa Rita jail?

25 A On this trip?

1 Q Yes, sir.

2 A Since 2020, April.

3 Q Has anybody indicated to you whether you
4 will probably spend the rest of your sentence here
5 at the Santa Rita jail, or do you have a reason to
6 believe that you may be transferred to some other
7 facility?

8 A I've been told I'll be sent to CDC.

9 Q Do you currently, Mr. Mallett, take any
10 type of medication?

11 A Yes, sir.

12 Q What medication are you currently taking?

13 A They gave me Cymbalta for the nerve damage
14 to my back. I have sciatic nerve damage. They gave
15 me Suboxone for the pain and they gave me some other
16 meta -- something for pain too. And then they gave
17 me allergy pills for my -- I don't know. I have no
18 allergies. They just said it helps with my ear.

19 Q Do you currently have any kind of brace or
20 sleeve for your left leg?

21 A I have a sleeve.

22 Q And when you had your surgery done at
23 Stanford in 2014, did any of your health care
24 providers there tell you about any future surgeries
25 you may or may not need?

1 A Yes.

2 Q What did they tell you?

3 A They told me that it's a possibility that
4 in five years I may need reconstructive knee
5 surgery.

6 Q Did they explain to you why that may be a
7 possibility?

8 A Yes, because of the torn ACL, MCL and the
9 cartilage being deteriorated.

10 Q A moment ago, if I'm not mistaken, you
11 mentioned something about some nerve damage to your
12 back.

13 A Yes, sir.

14 Q Could you tell me how that injury
15 occurred.

16 A In 2014, at work, when I sustained a leg
17 injury, I also sustained a back injury. And it
18 affected my sciatic nerve, so I have sciatic nerve
19 damage on my left side.

20 Q Have you had any kind of surgery for the
21 nerve damage in your back?

22 A No, sir. They don't give it to me here.

23 Q You mentioned that it was a physician who
24 told you you couldn't have a knee brace while you
25 were incarcerated at Santa Rita jail; is that

1 correct?

2 A He said I couldn't have a specific kind of
3 knee brace. He said I could have a sleeve knee
4 brace, but the one with the hinges, he said it's
5 security or something like that.

6 Q And you're kind of getting to the question
7 that I want to ask you about.

8 Is it your understanding that at
9 Santa Rita jail knee braces aren't allowed because
10 they're considered a security risk, a security
11 issue?

12 A Yeah. That's basically what he was
13 telling me.

14 Q And this is what the doctor explained to
15 you?

16 A Yes. He said because of the prongs that
17 the knee brace has on the sides, you can't have it.
18 But crutches have 7- to 8-inch screws that you can
19 make an ice pick out of, so what's the difference?

20 Q Well, have you ever asked Custody what's
21 the difference and why you can't have a knee brace
22 and others are allowed to have crutches?

23 A No, they give me a crutch before when I
24 first injured my -- when I got the staph in my knee.
25 They gave me crutches.

1 Q Mr. Mallett, what I'm trying to find out
2 is has Custody or anybody affiliated with Custody
3 explained to you why they don't allow you to have a
4 brace, but they are allowing you to have a sleeve?

5 A No.

6 MS. HUANG: I'm sorry, can you repeat that last
7 part.

8 Q BY MR. BERTLING: But they are allowing
9 you to have a sleeve.

10 A No. I wrote several grievances on this
11 matter, and each time they just said it's denied.
12 They don't give an explanation as to why on the
13 grievances. They just said it's not in the Wellpath
14 provisions to assign a knee brace. I'm not allowed
15 to have the knee brace. It's in several grievances
16 I've written over the years.

17 Q Do you know whether any health care
18 provider affiliated with Wellpath has recommended
19 that you be given a brace?

20 A No, not that I know of.

21 Q On April 20, 2022 there was a Fifth
22 Amended Complaint filed in which you've been named
23 as a Plaintiff. And I want to read some language to
24 you from that Complaint and ask you some questions.

25 Some other attorneys may have other

1 questions about this, but my purpose, Mr. Mallett,
2 is just to focus on the medical treatment; okay?

3 A Okay.

4 Q So it indicates here that:

5 "When inmates are transferred and
6 placed into a different cell, Santa Rita
7 jail has no process for having cells
8 cleaned or disinfected prior to the
9 transfer. Each inmate is required to do
10 his or her own cleaning. During one of
11 these cell transfers, James Mallett was
12 placed in a filthy cell with human waste
13 on the floors and walls."

14 And I want to focus on that statement.
15 When was it, Mr. Mallett, that you were placed in a
16 filthy cell with human waste on the floors and
17 walls?

18 A Okay, so I moved from Cell 9. I was in
19 Housing Unit 3, Cell 9 when I first came to
20 Santa Rita in April of 2020. I believe it was early
21 May -- I only spent a week or two in that cell, then
22 they moved me to Cell 5. I was in Cell 5 before
23 because they had Covid and all of that.

24 However, to be A-holes on the police part,
25 they smeared the cell and dirtied it up; right? So

1 the police had to clean it out, but when they put me
2 in the cell, they didn't clean it out. I had to
3 clean it. I had to clean that cell out. So in my
4 cleaning procedures --

5 I mean, I'm touching other -- No gloves,
6 no nothing. You know, this is all using a face
7 towel and my own soap and have to clean it out with
8 just my hands. No disinfectant, none of that.

9 You have to beg the police -- Right now
10 they don't come by and do cell cleaning, none of
11 that. That's something you have to ask the police
12 for and still not jeopardize pod time and have
13 everyone mad at you. They make you pick cell
14 cleaning on pod time. They're supposed to come by
15 and give you cell cleaning, yet they don't ask for
16 that anymore.

17 So when I moved into that cell, it was
18 dirty. I had to clean it from top to bottom, all
19 the walls, the floor, move the mattress. And there
20 was other people's hair and body -- like, you know,
21 fingernails and all type of stuff up under the
22 mattress.

23 So I cleaned it out. And a few days
24 later -- like not a few days, the next day, I got a
25 bump on my knee. It started hurting real bad, and

1 then it bust.

2 Q So let me stop you there for a minute
3 because I'm going to -- because your Complaint
4 identifies that, and I want to read the language in
5 the Complaint.

6 A Okay.

7 Q So let me just put this into context so
8 you understand what's been said before the next
9 sentence I'm going to focus on. It says:

10 "During one of these cell transfers,
11 James Mallett was placed" --
12 By the way, is it Mallett or Mallet?

13 A Mallett. Like the hammer.

14 Q Okay.

15 "James Mallett was placed in a filthy
16 cell with human waste on the floors and
17 wall. As a first order of business, he
18 cleaned every inch of the cell, including
19 the floors and all walls as high as he
20 could reach. However, because the jail
21 does not provide prisoners with
22 disinfectant, James Mallett was unable to
23 sterilize the cell.

24 "The next day or so, on his left
25 knee, he suddenly developed what looked

1 like a white hard pimple sitting on the
2 top of purple swelling on his left knee."

3 So I want to stop right there for just a
4 moment.

5 MS. HUANG: No, wait. You're stopping
6 yourself, not Mr. Mallett.

7 MR. BERTLING: Yeah.

8 Q So when it says "the next day or so," are
9 we still talking about May of 2020, or can you be
10 more specific?

11 A Yeah. It was in May, whenever they -- I'm
12 pretty sure they have it documented when they moved
13 me into that cell. Because it was like a couple
14 days later when the knee started bothering me.

15 Q Okay. It indicates that you:

16 "... developed what looked like a
17 white hard pimple sitting on top of purple
18 swelling on his left knee."

19 A Yes.

20 Q Can you tell me how big that pimple
21 looked.

22 A It was pretty big. I thought -- Everybody
23 thought it was a spider bite at first, but it was
24 the size of --

25 MS. HUANG: Was it the size of a ping pong

1 ball, a tennis ball?

2 THE WITNESS: No. It was about the size of the
3 end of this pen right here (indicating).

4 MS. HUANG: The white part?

5 THE WITNESS: Yeah, the tip.

6 MS. HUANG: So the record should reflect that
7 Mr. Mallett pointed to the tip of my pen, which to
8 me looks like it's maybe a centimeter, centimeter
9 and a half.

10 MR. BERTLING: About, yeah.

11 MS. HUANG: Yeah.

12 Q BY MR. BERTLING: It indicates that this
13 pimple was on top of purple swelling on your left
14 knee.

15 A Yeah.

16 Q When did you first notice the purple
17 swelling of your left knee?

18 A I don't know if it was the next day or the
19 day before, but it was a day or two later. At first
20 it was just pain.

21 And I had on thermals, and I looked and it
22 was like a knot, like a big bump; right? I was
23 thinking it was a pimple. And then it was -- I just
24 seen all the purple stuff, and I knew something was
25 wrong. I had never had a pimple or a bump on my leg

1 like that. Maybe on my face, a bump or pimple, but
2 not on my body.

3 So I asked them -- I did a "man down."
4 And when I tried to stand up -- When I got out of
5 bed, when I tried to stand up, it was like all the
6 blood like draining to my leg, and I couldn't do it,
7 so they had to carry me. They carried me to
8 Medical.

9 And the lady, like, cleaned it with the --
10 What's that stuff? It's like Iodine stuff. She
11 cleaned it up and all that, but that was it. They
12 wrapped it up and she told me to put a medical call
13 to see the doctor.

14 Q Let me read the rest of the Complaint
15 here. It says: "The pain was so severe" -- Excuse
16 me.

17 "The pain was severe, so severe, he
18 could not walk and had to be carried by
19 fellow inmates to a wheelchair, where he
20 was wheeled to the nursing station."

21 Do you remember the name of the fellow
22 inmates who put you in a wheelchair?

23 A They was pod workers. So I can't recall
24 his name. He just got sentenced. Both of them got
25 sentenced. But one was -- The name was Juanito. I

1 forget the name. The deputies, they know it. I
2 just know one of them is Juanito. And the other
3 one, I don't know.

4 Q Where did they get the wheelchair that
5 they placed you on?

6 A They eventually brought it to the office.
7 They took me into the medical office and put me in a
8 regular chair -- well, not on a chair, on a -- The
9 nurse asked them to put me on the little medical
10 bed. And then I sat up there. And I leaned over,
11 but -- I laid down, and she did whatever she did.

12 But then a few minutes later they wheeled
13 it in. But once they took me back to the cell, they
14 took the wheelchair away. So I still had to move
15 around without it. And a few days later they
16 brought crutches, once I seen the doctor.

17 Q How long was it after you noticed this
18 white pimple that was sitting on top of purple
19 swelling of your left knee before you were brought
20 to the nursing station?

21 A Rephrase that.

22 Q So I'm trying to find out. You see this
23 white pimple on top of the purple swelling. It's
24 painful for you. It's severe pain. You talk about
25 it in your Complaint. How long did it take for you

1 to see a medical person after you first saw that
2 white pimple?

3 A I did the "man down."

4 Q Okay. That's what -- Thank you for the
5 clarification.

6 Do you remember the name of the health
7 care provider that you saw that day?

8 A No, I can't. It was a regular nurse. It
9 was -- It wasn't even a doctor. It was a regular
10 nurse, a lady nurse.

11 Q Was it a male or female doctor?

12 A It was a nurse.

13 Q Was it a male or female health care
14 provider?

15 A I can't recall.

16 Q It goes on to say that:

17 "The nurse diagnosed it as an abscess
18 and accused James Mallett of being a drug
19 user, which was not true."

20 A Yeah.

21 Q Now, during that encounter with the nurse,
22 what do you recall taking place? I'd like to know
23 everything that you recall about that encounter.

24 A I asked her what it was, what was going
25 on. She tell me did I get bit by a spider or

1 whatever. She said it looked like an abscess. And
2 she said, "Do you shoot drugs on the street?"

3 And I'm, like, "What?"

4 (Reporter clarification.)

5 THE WITNESS: She asked me did I shoot drugs on
6 the street. Did I mainline drugs on the street.

7 And I'm, like, "What? No, I don't shoot
8 drugs."

9 She said, "You have to have, because this
10 is an abscess."

11 And I'm, like, "I have never shot drugs
12 down my leg, so it can't be an abscess."

13 She's, like, "That's what it is."

14 Just looking at it she's saying all this.
15 She never took a swab, none of that. So I took it
16 as being whatever she said it was. I didn't argue
17 with her.

18 And then the next doctor seen me, and the
19 next doctor. And it took like a whole two, three
20 months or whatever, maybe more, until they finally
21 swabbed it. And that's when they said I had,
22 whatever, the staph.

23 Q When you saw the nurse that day, how long
24 was it until you saw a person that you believed was
25 a doctor?

1 A The next day after that, after I was on
2 the "man down" call, they took me to see the doctor.

3 Q And do you recall the name of the doctor
4 you saw at that time?

5 A No. It was -- She don't even work here
6 anymore. It was an Indian lady. She doesn't work
7 here anymore.

8 Q Do you know if it was Dr. Magat?

9 A I'm not sure. Is it a lady?

10 Q Yes. Dr. Magat is a lady.

11 MS. HUANG: Only if you remember.

12 THE WITNESS: I don't know her name. She's got
13 long hair.

14 Q BY MR. BERTLING: What do you recall about
15 the encounter that you had with this doctor?

16 A She didn't -- Again, she didn't do nothing
17 outside of what the nurse did. She just cleaned the
18 wound. She put a bandage or whatever to sterilize
19 stuff on there. She put some, like, ointment on it
20 and then wrapped it up and told me that I would be
21 seen later on in the day. And they wrapped it twice
22 a day, in the morning and afternoon.

23 Q And how long did they do this wound care
24 for you, where they wrapped it in the morning and
25 then in the afternoon?

1 A For a while. It was a while.

2 Q And where were you when you would get this
3 wound care treatment provided to you? Were you in
4 your cell? Did they bring you to sick call?

5 A They would have me walk to sick call.

6 Q And when they were cleaning this wound and
7 doing the wound care, what did you notice about the
8 wound, if anything?

9 A That it was just a lot of discharge with
10 pus and it was purple-ish. And at one time it
11 seemed to be getting larger.

12 Q Did you start running any kind of fever?

13 A No. I don't think so. I'm not sure.

14 Q Did you start developing nausea or
15 vomiting?

16 A No, just the extreme pain and, like,
17 dizziness from standing up.

18 Q Did they ever do anything where they
19 pushed down on the area where there had been the
20 abscess or pimple and express and push out pus?

21 A Yes. She did it several times when she
22 cleaned it. But she told me don't do it, that she
23 would do it.

24 Q And that's one of the issues that I need
25 to ask you. Had you been doing anything to touch or

1 deal with that?

2 A No. She tried to tell me that I cut it
3 with a razor or something. And I was, like --

4 I mean, the same lady that accused me of
5 shooting drugs is the same lady that accused me of
6 cutting my own flesh with a razor, like I'm about to
7 do that to myself.

8 And I told her that there's no way I used
9 a razor of any kind to cut my leg.

10 And she was, like, "Then how is it open?"

11 And the doctor explained to her, "I busted
12 it open." So she made herself look like a fool, but
13 she accused me of this. And the doctor had to
14 explain to her, "No, I did this."

15 MS. HUANG: The doctor said he did it?

16 THE WITNESS: The doctor lady did it, busted it
17 open.

18 And she said, "You weren't supposed to
19 touch it. What did you do, cut it with a razor?"

20 (Reporter clarification.)

21 THE WITNESS: She asked me, "Well, how did it
22 bust open? Did you cut yourself with a razor?"

23 And the doctor told her, "No, I bust it
24 open to release the pus out of it."

25 So she accused me of something that the

1 doctor clarified that I did not do.

2 Q And how many times do you recall a doctor
3 doing that, where they would bust it open and allow
4 stuff to escape?

5 A They cleaned it I don't know how many
6 times. They cleaned it daily. It was daily being
7 cleaned and drained. But nobody actually did a
8 swab.

9 Q And do you know what they were using to
10 clean and drain the pimple?

11 A Like brownish stuff.

12 Q Betadine?

13 A Betadine, yeah.

14 Q If you know.

15 A I don't know the name of it.

16 MS. HUANG: Was it liquidy? Was the brownish
17 stuff very liquidy, like water?

18 THE WITNESS: Yes. It was like brownish
19 water-like stuff. It made your leg turn reddish.

20 Q BY MR. BERTLING: The Complaint goes on to
21 say:

22 "Two or more weeks later a nurse came
23 to see James Mallett and finally took a
24 swab so the infection could be cultured.
25 It turned out that the infection was

1 staph."

2 And what I wanted to clarify is was it two
3 weeks after you had first noticed the pimple, that
4 white pimple, that they came and took a swab so the
5 infection could be cultured?

6 A Approximately.

7 Q And then after they cultured it and the
8 lab came back, it's my understanding you were told
9 that you had a staph infection.

10 A Yes, sir.

11 Q Did anybody in Medical explain to you how
12 it was you developed this staph infection in your
13 left knee?

14 A No.

15 Q And then after you were told that you had
16 a staph infection, were you placed on antibiotics?

17 A Yes.

18 Q And how long after you were placed on
19 antibiotics, from your perspective, did it take
20 until your left knee cleared up from the infection?

21 A It was about another week.

22 Q And during that time were they still
23 continuing to clean the wound?

24 A No. That kind of, like, dwindled down. I
25 was left to my own after a while.

1 Q And is it your recollection that it was
2 about a week -- I don't want to put words in your
3 mouth -- after you were started on the antibiotics
4 that that infection cleared up, from your
5 perspective?

6 A It may have been a week, yeah. Maybe a
7 little longer. I don't know exactly the date.

8 Q Now, it goes on to say in the Complaint
9 that:

10 "Around this time, James Mallett
11 started getting an ear ache and was having
12 discharge from his left ear."

13 A Yes.

14 Q When do you recall -- I mean, do you
15 recall was it in May or June, or when do you recall
16 first having a problem with your left ear?

17 A Right about the same time of the staph.
18 Right after.

19 Q Did anybody explain to you what was
20 causing your ear issues?

21 A No. They just gave me some type of eye
22 drops and told me to put it in my ear.

23 Q And so when you were having this
24 discharge, how long did you have discharge out of
25 your left ear?

1 MS. HUANG: Until the discharge went away?

2 MR. BERTLING: Yeah.

3 THE WITNESS: Oh, it's still there. I still
4 have it to this day.

5 Q BY MR. BERTLING: All right. So what is
6 being done to treat the discharge?

7 A Nothing. Nothing at all. I seen the
8 doctor yesterday, or the nurse, and she said she's
9 going to send me to the doctor, but this is an
10 ongoing thing. It's like --

11 Q How long have you had problems with this
12 discharge from your left ear?

13 A Since -- It come and go. That's what I'm
14 saying. It's like the staph. It lasted for a
15 good -- a while. This pus stuff, I don't know. It
16 come and go. Like right now it came, and then it
17 went away.

18 Q And do you know what they're doing to
19 treat the discharge?

20 A No. They're not cleaning it out or
21 nothing like that.

22 Q Are you given any kind of antibiotics or
23 medication?

24 A Not yet. I haven't seen the doctor.

25 Q Well, let me ask you, at any time since

1 you've had this discharge from your left ear, have
2 you been given antibiotics?

3 A Yeah. They put me on several different
4 antibiotics.

5 Q And from your perspective what impact, if
6 any, have these antibiotics had on the discharge?

7 A Well, the first antibiotics they gave me
8 wasn't working, and then they eventually had to give
9 me the strongest antibiotics that they have. And
10 that one cleared it up. It took the staph away.
11 But it took them a while to give it to me. It took
12 a long while.

13 I was being put on antibiotics, I was put
14 on ear drops, I was put on this daily thing where
15 they told me to pour water in my ear. And then I
16 had to clean it out and doing that. But they was
17 basically guessing, trying to figure out what they
18 was doing.

19 Q Did anybody explain to you why they
20 thought you developed this discharge in your left
21 ear?

22 A No, they never took the culture of it.
23 They never took the swab to tell me what it was,
24 until later on.

25 Q Have you sustained any hearing loss as a

1 result of this infection or issue in your left ear?

2 A Yes, sir.

3 Q Can you explain that to me.

4 A I've been to Highland. And they're
5 supposed to give me a hearing aid, but so far they
6 haven't given it to me.

7 Q When were you sent to Highland?

8 A Several times. I don't know the exact
9 date, but I went to go see the ear specialist
10 several times.

11 Q Have any of the health care providers at
12 Highland explained to you why you're having this
13 hearing loss?

14 A Nope. I mean, they all assume it's from
15 the staph.

16 Q Did they tell you that?

17 A No. They basically said -- I mean, they
18 asked me after the staph when it started happening,
19 so --

20 Q When did you first start seeing health
21 care providers at Highland after you first developed
22 the drainage in your left ear?

23 MS. HUANG: Objection. Vague and ambiguous.

24 Q BY MR. BERTLING: You can go ahead and
25 answer the question.

1 MS. HUANG: Did you understand it?

2 THE WITNESS: Can you repeat it.

3 Q BY MR. BERTLING: Yeah. So you developed
4 this drainage from your left ear; is that correct?

5 A Yes.

6 Q And at some point after you developed the
7 drainage in your left ear you're sent to Highland;
8 is that correct?

9 A Yes.

10 Q How long after you developed the drainage
11 in your left ear was it before you were sent to
12 Highland the first time?

13 A I have no idea. I go to the same doctor
14 for my eyes too, so, like, you're asking me --

15 Because it's the ear, eyes, throat, nose
16 specialist, so I've been there before for my eyes.
17 So it's kind of, like --

18 Q What is the problem that you've had with
19 your eyes, Mr. Mallett?

20 A I have glaucoma.

21 Q And are you treated for that glaucoma by
22 the ENT specialist at Highland?

23 A Yes.

24 MS. HUANG: EMT?

25 MR. BERTLING: ENT, Ear, Nose, Throat.

1 MS. HUANG: Ear, Nose, Throat. Okay.

2 THE WITNESS: Yeah, same doctor.

3 Q BY MR. BERTLING: And are you sent over
4 there where Custody takes you and you're seen by
5 them and they evaluate you and treat you?

6 A Yes. They take the pressure in my eyes,
7 test the pressure on my eyes --

8 Q And --

9 A -- every four months.

10 Q I'm sorry, I didn't mean to cut you off.
11 Have they been doing anything to treat
12 your ear?

13 A No. They just did the ear test. Like
14 they sent me to a specialist at that medical -- it's
15 on Foothill right by the Sheriff's Department, the
16 hospital. Do you know what I'm talking about?

17 Well, there's an ear specialist up in
18 there. They sent me in there. She put these things
19 on my head, and there's this noise that gets louder,
20 and I had to point when I heard something and when I
21 didn't. And so her recommendation was that I needed
22 hearing aids, I guess.

23 So she told me that I had lost some
24 hearing and did I want hearing aids. And I told
25 her, "Yeah," and so far I haven't gotten those. And

1 that was way over six months ago.

2 Q The Complaint goes on to say that:

3 "In addition to these issues,
4 James Mallett suffered a fracture of his
5 right hand."

6 When did you first suffer the fracture of
7 your right hand?

8 A October '21.

9 Q How did you sustain that fracture, if you
10 know?

11 A A fight.

12 Q And what treatment -- Well, first of all,
13 was the left hand -- Excuse me, was the right hand
14 ever x-rayed?

15 A It was x-rayed.

16 Q I'm sorry?

17 A It was x-rayed.

18 Q How long after your right hand was injured
19 was it until you got the X-ray?

20 A A few days.

21 Q Did any health care provider explain to
22 you what the X-ray showed?

23 A No. They just said my -- At first they
24 sent me a piece of paper saying that the X-rays were
25 not in normal standards, and I went to go see them.

1 And he told me I had a boxer fracture or something
2 like that.

3 Q Who's the "he"?

4 A Dr. Slaybaum (phonetic).

5 Q And what treatment -- Well, what kind of
6 pain did you experience from this fracture?

7 A It was -- I mean, it was, like, I couldn't
8 bend my hand. I couldn't pick up nothing. The pain
9 was extreme. I mean, I made my own little
10 cardboard, like --

11 MS. HUANG: Cast?

12 THE WITNESS: Yeah. Because they gave us these
13 horrible wraps. I had about 15 of them, and I put
14 15 of them and wrapped my hand. Because they
15 wouldn't give me -- They gave me a wrap, but it
16 wasn't straightening it out, so I had to do it on my
17 own.

18 Q BY MR. BERTLING: It indicates here:

19 "Defendant Wellpath's only medical
20 care was to provide James Mallett with an
21 ace badge."

22 Is that what you mean by "the wrap"?

23 A Yeah, the wrap.

24 Q And how long did you have to wear that
25 wrap?

1 A For, like, three months.

2 Q Do you continue to have any problems with
3 your right hand?

4 A Yeah.

5 Q What is the nature of the problem you
6 currently have?

7 A Well, I can't -- I write a lot because I'm
8 a poet. Plus I write letters to my family. But I
9 can't sit there and do my artwork. Because I used
10 to -- Because my hand gets stiff. And the pain,
11 it's like from gripping the pen too long. I have to
12 stop and exercise my hand.

13 Q Mr. Mallett, I'm done with my questions.
14 Some of the other attorneys may have a question or
15 two. And Ms. Huang may have questions as well.

16 MS. HUANG: Ms. Peters? Mr. Reitmeyer? Do you
17 have questions?

18 MS. PETERS: I do. Could we take a five-minute
19 break?

20 MR. BERTLING: It's fine with me.

21 Is that okay? Can we take a five-minute
22 break?

23 DEPUTY WHITE: Is that in the rules?

24 MS. HUANG: No. Call the Lieutenant.

25 DEPUTY WHITE: If everyone agrees.

1 MR. BERTLING: Yeah, okay.

2 DEPUTY WHITE: Any objections?

3 MS. PETERS: No.

4 MR. BERTLING: No.

5 MS. PETERS: Thank you.

6 (A brief recess was taken.)

7 MS. PETERS: Let's go back on the record.

8 MR. BERTLING: Put on your protest, Yolanda.

9 MS. HUANG: I will.

10 MS. PETERS: Are we on the record?

11 MR. BERTLING: Yeah.

12 MS. HUANG: I'm going to put on the record that
13 this is an objection to disparate treatment by the
14 jail. I was specifically told that I could not have
15 my laptop with me today, and yet Peter has his
16 personal laptop in the jail.

17 I was also told the last time that I was
18 not allowed to have a laptop. I've requested that
19 Lieutenant Modeste be contacted and that I be
20 informed and provided with a copy of that policy.

21 So I feel like there is discriminatory
22 treatment and that it is to handicap and give
23 preferential treatment to Defendants and to handicap
24 Plaintiffs.

25 MR. BERTLING: And I'd just like the record to

1 establish that I'm not certain what my paralegal and
2 assistant filed, but I believe we were able to bring
3 the laptop at CDCR.

4 My briefcase was checked. I was allowed
5 to bring in the laptop, and neither Ms. Huang nor I
6 were allowed to bring in our cell phones. I had to
7 rent a locker and put my cell phone away. So I
8 don't personally know what the policy is. I just
9 know that I brought my laptop at CDCR for the
10 deposition last week, and I brought my laptop today.

11 So we're ready to go. Let's go back on
12 the record so Mr. Mallett can have his questioning
13 completed.

14 MS. PETERS: Okay.

15
16 EXAMINATION

17 BY MS. PETERS:

18 Q Mr. Mallett, my name is Temitayo Peters,
19 and I represent the County of Alameda. Do you
20 understand that you're still under oath right now?

21 A Yes, ma'am.

22 Q All right. So I just have a couple of
23 questions for you. First, do you know a deputy by
24 the name of Deputy Ignont?

25 A Not to my knowledge.

1 Q So, to your knowledge, you've never
2 interacted with a Deputy Ignont; is that correct?

3 A Not to my knowledge. It's not ringing a
4 bell.

5 Q Okay. What about a Deputy Joe, does that
6 ring a bell, that name?

7 A No.

8 Q Was that a "no"?

9 A No, ma'am. I don't recall either one.

10 Q Okay. So to your knowledge you've never
11 interacted with a deputy by the name of Deputy Joe?

12 A No, ma'am.

13 Q Okay. And Mr. Bertling earlier talked to
14 you about the allegations that you're making in the
15 Fifth Amended Complaint that was filed in this
16 lawsuit. And you understand that you're one of the
17 named Plaintiffs in this lawsuit; correct?

18 A Yes, ma'am.

19 Q And you previously talked with
20 Mr. Bertling about, like, a white pimple on top of
21 purple swelling on your knee.

22 Do you recall that testimony?

23 A Yes, ma'am.

24 Q Did any medical provider ever tell you
25 that that white pimple was caused by a sanitation

1 issue in the cell that you testified previously
2 about?

3 A They didn't tell me anything. You know,
4 they finally swabbed it few weeks later.

5 Q I'm so sorry, I did not understand you.
6 They didn't tell you anything about --

7 A They didn't tell me anything until the
8 swab came back that it was staph.

9 Q So at the point when the swab came back,
10 did any medical provider ever tell you that the
11 staph was caused by unclean cell conditions?

12 A They did. They tell me it came from being
13 around an unclean environment. And it could be a
14 small cut or whatever inside your skin, where
15 bacteria gets in and causes the staph to fester on
16 it or whatever he said.

17 Q And the issue occurred approximately a
18 month after you last came into custody; correct?

19 MS. HUANG: Objection. Misstates his
20 testimony.

21 Q BY MS. PETERS: You can answer.

22 A I don't know the exact date it happened.
23 I know it happened when I moved into Cell 5.

24 Q Okay. Do you recall if it was soon after
25 you came into custody or a long time after? Do you

1 have an estimate?

2 A It was some weeks after I was already in
3 jail. I was already in custody, so weeks later.

4 Q Did you say "a few weeks"? I didn't hear
5 you.

6 A Well, I was in custody for at least a
7 month, month and a half.

8 Q Okay. So going back to your prior
9 testimony about the dirty cell you believe you were
10 placed in when you were moved, approximately how
11 long were you in the cell before you were provided
12 cleaning supplies?

13 MS. HUANG: Assumes facts not in evidence that
14 he was ever provided cleaning supplies.

15 Q BY MS. PETERS: Go ahead.

16 A The Sergeant at the time, Sergeant Nixon
17 (phonetic) wouldn't allow medical supplies to be
18 kept in the cell, so we were only allowed to get
19 them when we did cell cleaning. They don't ever do
20 cell cleaning. You have to ask -- You have to
21 basically ask them. And whenever they get around to
22 it, they do it.

23 Q But you were provided cleaning supplies;
24 right? Is that accurate?

25 A No. Again, not right then, no. Not right

1 then, no.

2 Q So your testimony -- When you were first
3 transferred to that cell, you were not provided with
4 cleaning supplies; correct?

5 A No.

6 Q Approximately how long after you were
7 transferred to the cell were you provided with
8 cleaning supplies?

9 A A while. It depends on the deputy.
10 That's what I'm telling you, you don't get it --
11 It's not handed out. Like you don't get. It's not
12 handed out or something that you ask for it and they
13 immediately bring it to you. It's when they feel
14 like it. It's not something they do.

15 And if they do it, it's in a milk crate,
16 and there's shit and piss and all that on that
17 thing. And then you're walking around with that in
18 your cell. I don't want that in my cell.

19 So, no. What you're asking is something
20 that don't happen. It's not like that. It's not
21 like they came and, "Here's a mop and a clean
22 bucket." None of that. None of that. You're not
23 going to get no mop in your cell, none of that.
24 It's not going to happen.

25 Q So you have been provided with a mop on

1 occasion; is that correct?

2 A No. You're never going to get a mop.
3 They're never going to give you a mop inside your
4 cell. Never. Never, ever will you receive a mop in
5 Santa Rita.

6 Q I understand your testimony is that you're
7 not allowed to keep a mop in your cell. Are you
8 provided access to a mop at all?

9 A No. You're not allowed a mop at all
10 whatsoever, ma'am.

11 Q Okay.

12 A They're not going to give you a mop to
13 clean your cell.

14 Q Okay. So going back, I'm not talking
15 generally about cleaning supplies. I'm talking
16 about the specific time you were placed in that cell
17 that you testified about previously, when you were
18 being moved from 5 -- I think it was Cell 9 to
19 Cell 5.

20 Do you recall that testimony?

21 A Yes, ma'am.

22 Q And then you talked about cleaning the
23 cell, but not having gloves.

24 Do you recall that testimony?

25 A Yes, ma'am. I recall I said that I

1 cleaned the cell with my own soap. No disinfectant,
2 my own soap.

3 Q So approximately --

4 Go ahead.

5 A That's what I cleaned it with, soap. My
6 hands and soap.

7 Q Okay. So approximately how long were you
8 in the cell before you were able to begin cleaning
9 it?

10 MS. HUANG: Excuse me? I didn't hear that.

11 Q BY MS. PETERS: Approximately --

12 Ms. Alvarado, can you read back the
13 question.

14 (The record was read as follows:)

15 "Q Okay. So approximately how long
16 were you in the cell before you were able
17 to begin cleaning it?"

18 THE WITNESS: I started cleaning it right then
19 and there, when I went to the cell, with soap and
20 water. I told you that.

21 Q BY MS. PETERS: Okay. And at any point
22 did you ask a deputy for cleaning supplies?

23 A Yes. I asked them, and I didn't receive
24 it.

25 Q I didn't catch the end there.

1 A I did, but I did not receive any.

2 Q So at no point while you were in the cell
3 that you talked about earlier did you receive any
4 cleaning supplies. Is that your testimony?

5 MS. HUANG: Misstates his testimony. You were
6 originally asking him about when he was cleaning the
7 cell after he was first put in there, and his
8 testimony is that he did it.

9 (Reporter clarification.)

10 MS. PETERS: I didn't hear that either. Can
11 you read back the last question.

12 (The record was read as follows:)

13 "Q So at no point while you were in
14 the cell that you talked about earlier did
15 you receive any cleaning supplies. Is
16 that your testimony?"

17 THE WITNESS: No, that's not my testimony.
18 That's your testimony.

19 Q BY MS. PETERS: So when did you receive
20 cleaning supplies when you were in that cell?

21 MS. HUANG: At any time while he was in Cell 5,
22 is that the question?

23 MS. PETERS: That's not my question.

24 Q My question is previously you testified,
25 when Mr. Bertling was questioning you, that you were

1 moved from Cell 9 to Cell 5 and that it was dirty.
2 So when you were initially moved, at what point did
3 you receive cleaning supplies?

4 MS. HUANG: Vague and ambiguous. He's already
5 testified that he never received cleaning supplies.

6 MS. PETERS: Ms. Huang, you can object, but
7 speaking objections are not appropriate. If you
8 don't like the question, object, and then let him
9 answer.

10 MS. HUANG: Misstates his testimony.

11 Q BY MS. PETERS: All right, Mr. Mallett,
12 you can answer the question.

13 A So, again, I did not receive any supplies
14 to clean the cell myself.

15 Q At any point while you were in Cell 5 in
16 Housing Unit 3 did you receive cleaning supplies?

17 A Yes, eventually.

18 Q How often, if you can recall, did you
19 receive cleaning supplies when you were in that
20 cell?

21 A I mean, I can't say, like, every day, but
22 periodically. Maybe two -- Maybe two, three times a
23 week if you ask for it.

24 It all depends on the deputy and what
25 they're doing. I mean, shit happens in jail, so

1 they be busy a lot. They're human beings. They
2 forget about you. You're just a piece of shit in
3 there. With other things that happen in there, they
4 forget you. They leave you and you just have to
5 wait til pod time.

6 And then you have to remind the deputy,
7 and he's, like, "All right, I'll get you," but by
8 that time it's chow. So it's, like, you know,
9 you're put on the back burner. So find your own
10 way. You get your soap and your water and you put
11 it in the bucket. You get an old shampoo bottle and
12 clean the cell that way.

13 Q So it sounds to me like sometimes they
14 can't provide the cleaning supplies immediately, but
15 eventually -- and sometimes you have to remind
16 them -- you get cleaning supplies?

17 MS. HUANG: Objection. Misstates his
18 testimony.

19 THE WITNESS: No. They give it to you if
20 they're reminded, yeah. You can ask for it, and
21 they give it to you sometimes right then and there.
22 Sometimes not at all. You know, it depends.

23 I mean, it's not an everyday thing. It's
24 not mandatory. You have some Sergeants that they
25 don't even like you to have disinfectant in your

1 cell. They'll write you up.

2 There was a period of time when
3 Sergeant Nixon was our Sergeant where we couldn't
4 even have disinfectant in our cells. He wouldn't
5 allow the pod workers to give us disinfectant to
6 clean our cells, so --

7 Q So you talked about disinfectant. What
8 other types of cleaning supplies are you generally
9 provided access to?

10 A Nothing. What other chemicals are there?

11 Q I mean, do you get brooms?

12 A I mean, they get you a handle to the
13 bedroom. Not the stick, but the bottom part, the
14 little bitty -- where the brush is at. They give
15 you that.

16 Q Did you get dust pans?

17 A Who?

18 Q Do you get dust pans?

19 A Dust pans? You get dust pans and a broom.
20 And there's a cup with a toilet brush inside, and
21 it's -- Yeah. It's not something that you would
22 want to clean with, let's put it like that.

23 Q What else?

24 A It's something you would rather throw away
25 rather clean with. But that's what they give us.

1 Q Toilet brushes. What else do you get?

2 A That's it. A spray bottle with some
3 watered down disinfectant. Or maybe it might be
4 blue window wipe. It depends. Not always
5 disinfectant. Sometimes window wipe spray, which is
6 not a disinfectant, but they give it to you.

7 Q Anything else?

8 A No.

9 Q Have you ever been a pod worker?

10 A No. They won't allow people with my
11 charges to be pod workers.

12 Q Have you ever seen pod workers working in
13 any of the housing units you've been assigned to?

14 A Yeah.

15 Q Was that a "yes"?

16 A Yeah, they have pod workers in there.

17 Q Have you ever seen pod workers cleaning?

18 A It depends on the pod workers. It's on
19 them. Some pod workers don't clean at all. Some
20 pod workers just, you know, run their mouths.

21 Q My question, sir, was have you ever seen
22 any pod workers cleaning in any of the housing units
23 you've been assigned to?

24 A I've seen them periodically, yes.

25 Q And what are they -- What have you seen

1 the pod workers cleaning?

2 A They vacuum the floor and sweep and mop
3 the floors, the little walk space. That's it.

4 Q Have you ever seen anyone other than a pod
5 worker cleaning in any of your housing units?

6 A No. There ain't anyone but pod workers.

7 Q Have you seen any of the other inmates
8 assigned to your housing unit cleaning ever?

9 A No. No. I don't see that.

10 Q And the housing unit that you've been
11 assigned to, are they dorm style or are they single
12 cells?

13 A Double cells.

14 Q Got it.

15 Have you ever seen a copy of the Fifth
16 Amended Complaint?

17 A I believe I answered that already.

18 Q Yeah, I'm sorry. Sometimes I can't hear
19 you, so I apologize if I ask you the same question.

20 So is that a "yes" or "no," have you ever
21 seen a copy of the Fifth Amended Complaint?

22 A No.

23 Q Okay. I'm going to just ask you, there's
24 a number of other people who are named as Plaintiffs
25 in the Complaint, so I just want to know if you have

1 ever talked to any of them.

2 Do you know an inmate by the name of
3 Daniel Gonzalez?

4 A No, not to my knowledge.

5 Q What about Lawrence Gerrans,
6 G-e-r-r-a-n-s?

7 A No, ma'am, not to my knowledge.

8 Q Cedric Henry?

9 A No, ma'am.

10 Q Michael Lockhart?

11 A I know of him.

12 Q Have you ever spoken to him?

13 A No.

14 Q What about Randy Harris?

15 A No.

16 Q Eric Rivera?

17 A No.

18 Q David Misch, M-i-s-c-h?

19 A No, ma'am.

20 Q What about an Eric Wayne?

21 A No, ma'am.

22 Q Rashid Tucker?

23 A No, ma'am.

24 Q Darryl Geyer, G-e-y-e-r?

25 A No, ma'am.

1 Q And, lastly, Timothy Phillips?

2 A No, ma'am. If I do know any of these
3 people, it's by a nickname. It's not by their name.

4 Q Have you spoken to any other inmate in
5 Santa Rita jail about the allegations you are
6 alleging in this lawsuit?

7 A No.

8 Q Are you claiming that you sustained any
9 injuries as a result of the sanitation conditions at
10 Santa Rita jail?

11 A Am I claiming?

12 MS. HUANG: Do you understand the question?

13 THE WITNESS: Am I claiming that I received the
14 injuries from the sanitation?

15 Q BY MS. PETERS: Yes.

16 A Yes, I am.

17 Q What specific injury are you claiming that
18 you have sustained from the sanitation?

19 A The staph infection that degraded my ear
20 and hearing.

21 Q I'm so sorry --

22 A The staph. I'm claiming that the staph
23 that infected my knee and traveled to my ear has
24 caused me great pain and continues to be ongoing
25 pain in my knee and has taken the ability for me to

1 hear 100 percent in my left ear. That's what I'm
2 claiming.

3 And an ongoing constant pain in my knee,
4 more cracking and popping of the bones and aching
5 and unable to straighten it fully. All of that,
6 yeah. That's what I'm claiming. I didn't have all
7 this before that.

8 Q Did any medical provider tell you that
9 your staph infection traveled to your ear?

10 A I mean, yeah. They said a lot of things.
11 They said that too.

12 Q So my question is has any medical provider
13 told you that the staph infection from your knee
14 traveled to your ear?

15 MS. HUANG: The question is did the specific
16 infection from your knee go to your ear, or did it
17 come from someplace else?

18 THE WITNESS: No, it came from my knee. That's
19 what they told me.

20 Q BY MS. PETERS: Which medical provider
21 told you that the staph infection traveled to your
22 ear?

23 A I can't recall what names. I just told
24 him, "I don't know what happened." I've seen so
25 many different doctors, I don't know.

1 Q Was it a medical provider at Santa Rita
2 jail?

3 A A medical provider here. And they told me
4 that I either -- When it was unwrapped, I either
5 touched it and put some in my ear, or from me
6 playing with it. They said that I was the cause of
7 it, that I put the staph in my ear, basically. They
8 blame me for it traveling to my ear.

9 Q Did any medical provider ever tell you to
10 stop scratching the staph infection on your knee to
11 prevent it from spreading?

12 MS. HUANG: Objection. Lacks -- Objection.
13 Objection. Lack of foundation.

14 Q BY MS. PETERS: You can answer.

15 A No, they never told me.

16 Q Okay. I have no further questions
17 currently.

18 MS. PETERS: Buck, do you have any?

19 Oh, I'm sorry I have one follow-up.

20 Q So besides the knee and the ear, those are
21 the only two sanitation injuries you're claiming in
22 this lawsuit; is that correct?

23 MS. HUANG: Could you ask that question again.
24 I'm not sure I heard all of it.

25 MS. PETERS: Ms. Alvarado, did you get it?

1 THE COURT REPORTER: Yes.

2 MS. PETERS: Can you please read it back.

3 (The record was read as follows:)

4 "Q So besides the knee and the ear,
5 those are the only two sanitation injuries
6 you're claiming in this lawsuit; is that
7 correct?"

8 THE WITNESS: You want me to answer?

9 Q BY MS. PETERS: Yes, please.

10 A Yes, ma'am.

11 MS. PETERS: Thank you. All right.

12

13 EXAMINATION

14 BY MR. REITMEYER:

15 Q Mr. Mallett, my name is Charles Reitmeyer.
16 I'm from the law firm Morgan, Lewis & Bockius. Do
17 you remember previously you were deposed? It was
18 August 17, 2022. Do you remember that?

19 A Yes, sir.

20 Q Okay. So all my instructions from then
21 still apply; is that okay?

22 A Yes, sir.

23 Q Okay. Just for the sake of the
24 deposition, if I refer to "the jail," we're
25 referring to Santa Rita jail.

1 Is that okay?

2 A Yes, sir.

3 Q Great. Okay. So my understanding is the
4 last time that you were sent to Santa Rita jail was
5 in 2020; is that correct?

6 A Yes, sir.

7 Q And when you were sent to Santa Rita jail
8 in 2020, were you serving a sentence?

9 MS. HUANG: Mr. Reitmeyer, can you hold on just
10 a minute.

11 Are you okay, James? Do you need to stand
12 up and move just for a moment?

13 THE WITNESS: No. I just need to stretch my
14 leg.

15 DEPUTY WHITE: He's going to stand up for a
16 minute.

17 MS. HUANG: He just seemed to have been in
18 pain, that's all.

19 (Brief pause in the proceedings.)

20 THE WITNESS: Okay.

21 MS. HUANG: If you need to take a break because
22 you're in pain, you can say so.

23 THE WITNESS: It's just the leg. I'm all
24 right.

25 MS. HUANG: I'm sorry, Mr. Reitmeyer. Please

1 continue.

2 Q BY MR. REITMEYER: When you were sent to
3 Santa Rita jail in 2020 were you serving a sentence?

4 THE WITNESS: Yes, sir, I was.

5 MS. HUANG: No, you were in pre-trial.

6 THE WITNESS: Oh, pre-trial, yeah.

7 MR. REITMEYER: Yolanda, you can't answer for
8 the deponent.

9 THE WITNESS: I wasn't serving a sentence, no.

10 Q BY MR. REITMEYER: So where were you
11 before being sent to Santa Rita jail in 2020?

12 A At home.

13 Q At home. Okay. All right. And at some
14 point in time you pled guilty to the charges that
15 brought you to Santa Rita jail in 2020; correct?

16 A Yes, sir.

17 Q And what was that period again, I
18 apologize? I was having trouble hearing a lot.

19 When did you plead guilty to the charges
20 that brought you to Santa Rita jail?

21 A I think it was the fifth or second of this
22 month, September, I pled.

23 Q Since August 17, 2022 were you ever
24 hospitalized as a result of the food served to you
25 while you were incarcerated at the jail?

1 A No, sir.

2 Q Since August 17, 2022 did you ever receive
3 any medical treatment as a result of the food served
4 to you while you were incarcerated at the jail?

5 A No, sir.

6 Q Since August 17, 2022 did you ever seek
7 medical treatment as a result of the food served to
8 you while you were incarcerated at the jail?

9 A No, sir.

10 Q Okay. Since August 17, 2022 has any
11 nurse, doctor, or other health care professional
12 ever diagnosed you with any injury as a result of
13 the food served to you while you were incarcerated
14 at the jail?

15 A No, sir.

16 Q Since August 17, 2022 has any nurse,
17 doctor, or other health care professional ever
18 diagnosed you as being malnourished or
19 undernourished?

20 A No, sir.

21 Q Since August 17, 2022 has there been any
22 change in your health as a result of the food served
23 to you at the jail?

24 A No, sir.

25 Q Mr. Mallett, have you ever prepared any

1 type of Declaration or statement concerning your
2 conditions of confinement at the Santa Rita jail?

3 A Have I ever -- Say that again.

4 Q Have you prepared any type of statement or
5 Declaration concerning your conditions of
6 confinement at the Santa Rita jail for this
7 litigation or any other litigation?

8 A I wrote nothing no. No.

9 Q Okay. Okay. I'm going to try to share my
10 screen.

11 Okay, Mr. Mallett, do you see on this
12 screen a document that says: "I, James Mallett,
13 declare," and it has --

14 MS. HUANG: You're going so fast, he can't read
15 it.

16 MR. REITMEYER: I understand. I don't want him
17 to read it.

18 Q And it has seven paragraphs or sections.

19 MS. HUANG: We can't tell how many paragraphs
20 it has.

21 MR. REITMEYER: Okay, Yolanda, you can object
22 to questions, okay?

23 Q So, Mr. Mallett, I'm sharing on my screen
24 a document that says: "I, James Mallett, declare,"
25 and it has seven sections.

1 Have you ever seen this document before?

2 A Yeah, I've seen it.

3 Q All right. So why did you just say you
4 haven't prepared any Declarations?

5 A Because I didn't write it. I mean, I
6 don't have a typewriter. I don't recall writing it.
7 I know I signed it.

8 Q When did you see this document before,
9 sir?

10 A When me and my lawyer sat down and went
11 over it and I signed it.

12 Q Okay. So where did you sign it? Because
13 I'm not seeing a signature.

14 A Didn't I sign it?

15 MS. HUANG: You signed it here.

16 Q BY MR. REITMEYER: I can't hear what
17 you're saying, sir.

18 A I signed it when I talked to my lawyer in
19 here, in jail.

20 Q Okay. So was this a meeting in the jail?

21 A Yes.

22 Q Okay. And it's your testimony that you
23 signed a document similar to this?

24 A I signed a document. I gave her Power of
25 Attorney to sign documents on my behalf.

1 Q Okay. So, sir, you just said that you
2 signed a document similar to this. And I'm
3 wondering where that document is.

4 A I signed a document that said Yolanda can
5 be my lawyer. She filed this. That's what I had
6 her do.

7 MR. REITMEYER: So, Yolanda, I'm going to ask,
8 and I'll obviously follow up, but I'd like to see
9 that document.

10 THE WITNESS: Well, I gave her a Power of
11 Attorney. Yeah, I signed that document. And she
12 filed it on my behalf.

13 Q BY MR. REITMEYER: Mr. Mallett, I want to
14 make sure I heard it right, because the volume here
15 or whatever, the sound hasn't been great. But when
16 you were talking to Peter, you said that you have
17 documents in your cell concerning this litigation.

18 Is that correct?

19 A Yes, sir.

20 Q Have you ever provided any documents of
21 your own to your attorney, Ms. Huang?

22 A Yes. She got the documents, the medical
23 documents and the grievances and stuff.

24 Q Okay. Did any of those grievances concern
25 food?

1 MS. HUANG: I didn't hear the question, sorry.

2 Q BY MR. REITMEYER: Did any of those
3 grievances that you provided to Ms. Huang concern
4 food?

5 A Yes, sir.

6 Q Okay.

7 MR. REITMEYER: Yolanda, once again, I'll put
8 this on the record, and I'll follow up. From what I
9 can see in the records, you have never produced any
10 documents from Mr. Mallett, but yet he's now
11 testified that he provided you documents concerning
12 this litigation.

13 MR. BERTLING: Buck, I think what we'll do is
14 we'll just keep this deposition open until that
15 documentation is produced.

16 MR. REITMEYER: That's fine.

17 Okay. I have no further questions.

18 MS. HUANG: I have a few questions.

19

20 EXAMINATION

21 BY MS. HUANG:

22 Q Mr. Mallett, in addition to sanitation
23 problems that you had with your cell being dirty, do
24 you have sanitation problems with other parts of
25 your housing, like the showers.

1 A Yes, the showers, they stink. They're
2 filthy. They piss in the shower daily. They only
3 allow one door check an hour, so you've got 36 men
4 in there, or more than 36, about 36, so you do the
5 math how many people drinking coffee, working out,
6 they piss in the shower. Every five minutes, you
7 know, you get the five-minute unlocks, door checks
8 where you're able to -- If you're going in your
9 cell, you have five minutes to use the bathroom
10 between the two men. So if you've got diarrhea,
11 I've got to stand outside, stand and wait until you
12 go. Then they're going to cut off the TV and all
13 that, I mean, you know, unless you tell them or ask
14 for more time. It depends on the deputy.

15 Q So what is the current schedule for
16 out-of-cell time? Are you still in 3?

17 A No, I'm at 8.

18 Q 8 now?

19 A 8. They moved everybody from 3 to 8.

20 Q Housing Unit 8. And is that a general
21 population pod?

22 A Yeah.

23 Q And you're at 8 what?

24 A Cell 5, C-five.

25 Q C-5. And in C-5 of Housing Unit 8, when

1 do you get pod time?

2 A From 8:00 in the morning until 12:00,
3 sometimes 1:00, depending on the deputy.

4 Q And do you get pod time in the evening?

5 A Yeah. Sometimes from 6:00 to 10:00.
6 Sometimes from 7:00 to 10:00.

7 Q And when you guys get pod time, is there
8 someone using the shower every single pod time?

9 A Yeah.

10 Q And after you get pod time in the morning,
11 in the morning from 8:00 to 12 or 1:00, when is the
12 next time that the shower is cleaned?

13 MR. BERTLING: Objection. Lacks foundation.
14 Calls for speculation. Outside his personal
15 knowledge.

16 Q BY MS. HUANG: Can you tell?

17 A Sometimes the pod is cleaned one time
18 after every evening. After every 12:00 o'clock
19 lockdown, the pod will be cleaned. Vacuumed, clean
20 showers. They do it once a day.

21 Q In the afternoon?

22 A About 12:00 o'clock, yes.

23 Q And is the pod cleaned again after the
24 evening cell time?

25 A No.

1 MR. BERTLING: Objection. Lacks foundation.
2 Calls for speculation.

3 THE WITNESS: No.

4 Q BY MS. HUANG: So when you come out in the
5 morning from 8:00 to 12:00, whatever has been
6 deposited in the showers is still there?

7 MR. BERTLING: Objection. Lacks foundation.
8 Calls for speculation. Outside his personal
9 knowledge.

10 THE WITNESS: They only clean it once a day.

11 Q BY MS. HUANG: And can you tell that it
12 hasn't been cleaned? Does it smell like it's not
13 been cleaned?

14 A Yeah. You see the body hair, pubic hair
15 on the ground. You see dirt, soap wrappers, the
16 little top plastic -- white part of the soap. You
17 see that. You smell the urine.

18 It's only on the bottom shower. We don't
19 go upstairs, so -- I can't walk upstairs because of
20 my leg, so I --

21 Q And you just have one shower?

22 A No. You have a bottom and top shower, but
23 everybody uses the bottom to piss in.

24 MR. BERTLING: Objection. Lacks foundation.
25 Calls for speculation. Outside his personal

1 knowledge.

2 Q BY MS. HUANG: Is it just one shower on
3 the bottom?

4 A Just one shower on the bottom.

5 Q And when people come out for pod time, do
6 both tiers come out at the same time?

7 A Yes, ma'am.

8 Q All right. And when --

9 MS. PETERS: I'm just going to do a belated
10 objection. Vague. Lacks foundation.

11 Q BY MS. HUANG: When people come out for
12 pod time, are they on the bottom tier for pod time
13 or on the top tier, or both?

14 MR. BERTLING: Objection. Lacks foundation.
15 Calls for speculation.

16 MS. PETERS: Vague.

17 THE WITNESS: People spend most of their time
18 on the bottom. The only reason they go upstairs is
19 to use the shower or go in the cell.

20 Q BY MS. HUANG: All right. And are there
21 any rules that you're aware of that say during pod
22 time inmates are not allowed to go upstairs, to go
23 to the top tier?

24 A Not to my knowledge. They probably have
25 them.

1 Q Now, when you said cleaning solutions,
2 right, we were talking about cleaning solutions,
3 what color are the cleaning solutions that you get?

4 A Some be like a clear-ish white/yellow,
5 some blue like Windex. And another one is a mixture
6 of the yellow and blue, so it turns like a green
7 color.

8 Q Okay. Anything else? Any other color?

9 A No.

10 Q So when you're talking about sanitizing
11 solutions, which bottle or color solution are you
12 referring to?

13 A I assume it's the yellow one, because the
14 blue one is Windex.

15 Q And how do you know that the yellow one is
16 sanitizer?

17 A I don't. I don't know. It's just what
18 the pod workers tell us. That's what they give
19 them.

20 Q So they tell you it's sanitizer?

21 A Yeah. They tell us it's disinfectant.

22 Q But you don't know for sure?

23 A No, ma'am.

24 Q Does it come in a bottle that's labeled
25 "Sanitizer"?

1 A No. It's just in a used bottle that they
2 swap out disinfectant when -- It's a bottle, a spray
3 bottle. Or the pod worker dips a bucket inside the
4 mop bucket before it get all dirty and he give us
5 some of that, but it's still dirty mop water.

6 Q Do you --

7 MS. PETERS: Mr. Mallett, we can't hear you
8 when you're turning to your attorney. Can you look
9 at the screen.

10 Q BY MS. HUANG: Do you get a bottle that's
11 labeled, or is it just a plain spray bottle?

12 A It's just a plain, see-through spray
13 bottle.

14 Q So the bottle is not labeled?

15 A No, ma'am.

16 Q So you don't get a bottle that says
17 "Windex"?

18 A No. The bottle is clean.

19 Q You don't get a bottle that says
20 "Sanitizer"?

21 A No, ma'am.

22 Q So you don't get a bottle that tells you
23 what's in the ingredients that are in that spray
24 bottle that's yellow?

25 A No, not to my knowledge.

1 Q Okay. When you're cleaning your cell --

2 How long have you been in Housing Unit 8?

3 A I moved there about a year ago.

4 MS. PETERS: We can't hear you. We cannot hear
5 you.

6 THE WITNESS: Almost about a year. I believe
7 about a year ago.

8 Q BY MS. HUANG: And in the time that you've
9 been in Housing Unit 8, do you get that yellow,
10 solution every time you ask for it?

11 A Yes, that and, like I said, the blue or
12 the mixture of blue and green, them two together.

13 Q Do you get one bottle or two bottles?

14 A Just one bottle, one spray bottle.

15 Q So the spray bottle could be a blue
16 liquid. Yeah?

17 A It could be blue, it could be yellow, it
18 could be green.

19 Q Okay.

20 A I don't know how the pod worker fills the
21 bottle up.

22 And you have to realize, when it's filled
23 up and they do pass it out, it's going from one cell
24 to the next. Each inmate is taking disinfectant out
25 and putting it in the water so we could have some.

1 So it's not handed out like that. So we cheat the
2 system by taking it out and pouring --

3 Like I have a little soap bottle or
4 something, I take it out, fill it up, and then fill
5 the water up. And then it goes to the next cell, so
6 it gets diluted as it goes.

7 Q Does it affect you that your showers are
8 used as toilets?

9 MS. PETERS: Objection. Vague.

10 THE WITNESS: Yes.

11 MR. BERTLING: Objection. Lacks foundation
12 that they're used as toilets.

13 Q BY MS. HUANG: Does it affect you?

14 A Yeah. I mean, before I take a shower I
15 client it myself. I try to, anyway.

16 MS. PETERS: We cannot hear you.

17 THE WITNESS: Before I get in the shower, I
18 kind of like clean -- push all the stuff down the
19 drain. I get a cup, throw water on the floor and
20 get all the body hair and stuff until it goes down
21 the drain.

22 I mean, I don't clean the walls, nothing
23 like that. But I do do the floors so I'm not
24 stepping in it.

25 Q BY MS. HUANG: How does -- Are you injured

1 in any way from having showers that are used as
2 toilets?

3 MR. BERTLING: Objection. Lacks foundation.
4 Calls for speculation. Outside his expertise.

5 MS. PETERS: Vague. Calls for expert opinion.

6 Q BY MS. HUANG: You can answer. How are
7 you injured, if you are injured?

8 A Well, just the mental aspect of having --
9 showering in the filth, along with the bacteria that
10 caused my staph.

11 I mean, it's like -- I wouldn't say I'm
12 OCD now, but I'm, like, almost there, to where
13 everything I touch now, it's, like, you know, I'm
14 skeptical of everything because of having the
15 injuries.

16 Q Does it make you nervous?

17 A Yeah. I mean, it's, like -- I'm not
18 saying anxiety, but, like, you get anxious about
19 being in that environment and having to suffer that
20 kind of pain.

21 Q Now, you testified earlier in response to
22 Mr. Bertling's question that your ear is now having
23 problems, your left ear.

24 A Yeah. I'm still --

25 Q What are the problems?

1 A It has a discharge. There's a
2 brownish-yellow pus in there.

3 And the nurse yesterday said she had
4 signed me up to see a doctor and putting me on some
5 type of antibiotic.

6 Q In the last year since August of 2022 how
7 many times have you had pus come out of your left
8 ear?

9 A Several. Several times. I mean, every
10 time I had it, I put in a medical request or asked
11 the nurse to see me. Like I said, they gave me the
12 eye drops or this -- It's like an allergy pill. But
13 lately I haven't been receiving that.

14 Q Well, when you say eye drops, are they
15 drops that you're supposed to put in your ear?

16 A Yes. They said to put the eye drop in my
17 ear.

18 Q And do you know that the eye drop is
19 called?

20 A No. No. I don't know. Normally they
21 tell me to put three or four drops inside my ear.

22 Q Do they give you the bottle, or they do it
23 for you at pill call?

24 A No, they give me the bottle and I have to
25 turn my head and do that.

1 Q Now, other than coming into contact with
2 human feces in your cell and in the shower, do you
3 also come into contact with human waste in
4 multipurpose rooms?

5 A No. Sometimes you come in contact with,
6 like, blood and spit and stuff like that from people
7 fighting in the day room, I guess.

8 I mean, you don't know what's on their
9 hands. I'm sure they have feces on their hands as
10 well.

11 Q Do people -- Are there toilets in the Day
12 Room?

13 A There's no toilets, none of that.

14 Q And do people urinate in the multipurpose
15 room?

16 A No. They urinate in the bottom shower.
17 They urinate in the --

18 Q In the shower?

19 A In the shower. There's a sign --

20 Q I'm not talking about the Day Room where
21 you do pod time.

22 A Oh, I'm sorry.

23 Q I'm talking about the multipurpose room
24 where you're staying when you go to court.

25 A Oh, there's nothing in there. There's no

1 showers, just an empty room.

2 Q And are there toilets in there?

3 A No, ma'am.

4 Q And do you know what people do when they
5 have to use a toilet and you're being held in the
6 multipurpose room?

7 MS. PETERS: Objection. Calls for speculation.
8 Lacks foundation. Vague.

9 THE WITNESS: I have seen people piss in the
10 corner my with my own eyes. I've seen people
11 pissing in the corner.

12 Q BY MS. HUANG: And have you been forced to
13 come into contact with human urine?

14 MS. PETERS: Objection. Vague.

15 THE WITNESS: Personally? No. I mean, just
16 the time in my cell, like the shit the deputies do.
17 They throw feces on the windows and walls and stuff,
18 and I had to clean that up.

19 Q BY MS. HUANG: Does it affect you that
20 people are urinating in the corner of the
21 multipurpose room --

22 MS. PETERS: Objection. Vague.

23 Q BY MS. HUANG: -- when you're in there?

24 MS. PETERS: Objection. Vague. Lacks
25 foundation.

1 THE WITNESS: I think everybody -- I mean, you
2 have to stand to smell it. When you sit in there --

3 I mean, again, they are -- It's two
4 deputies per whatever hundred inmates, so they do
5 the best they can, I guess you can say.

6 When you come back from court, you're left
7 in this multipurpose room for an hour and a half.
8 But, mind you, you have already been sitting in
9 another room. But that room has a bathroom at
10 the -- where they check your record at. There's a
11 cell with a bathroom. You wait in there and then
12 they bring you back and you sit in the multipurpose
13 room for about -- anywhere from an hour to an hour
14 and a half, when they normally come strip you out
15 and you smell the piss.

16 Q BY MS. HUANG: Are you held in the
17 multipurpose room on the way to court in the
18 morning?

19 A No. They used to. They don't do it no
20 more. They used to wake you up at 5:00 o'clock in
21 the morning for no reason, and you'd sit in the
22 multipurpose room for hours.

23 Now they only come get you when -- They
24 just started this. Now they only come get you until
25 they escort you to court. So now you stay in the

1 pod now until the deputy escorts you, is coming to
2 get you. But you used to have to sit in the
3 multipurpose room. You had to sit in there with
4 however many people had to go to court, no chairs,
5 no nothing.

6 Q When did that change that you're held in
7 the pod and not in the multipurpose room?

8 A This is recently, like last month. It
9 just started to change. They don't do it -- They
10 leave you in the pod. And then when they're
11 ready --

12 Because most of the deputies, I guess the
13 two deputies we have, are currently flexible. Like
14 you talk to them and it change up, like. And so
15 they work with us.

16 And I don't know if he go in there or the
17 Sergeant go in there, but on his shift he don't come
18 get you until they're out there waiting. They don't
19 put you in the multipurpose room. They stopped
20 that.

21 Q Okay. Are they taking you out of your
22 cell early into the pod, or do they just leave you
23 in the cell until --

24 A No. After breakfast they just let you --
25 they leave the door open, and you can get ready,

1 brush your teeth, get your hot water. And if they
2 allow it, you can put on the news and you watch the
3 news, but it didn't used to be that way.

4 Q So if you need to use the bathroom, you
5 can use the toilet in your cell?

6 A Now you can.

7 Q And that's a new policy?

8 A Yes, something new. I don't know if
9 they're doing it everywhere, but that's something
10 they're doing recently when you go to court.

11 Q When you talk to medical people at
12 Wellpath about medical care, do they ever tell you
13 that you need to get that care at the next place
14 you're going?

15 A Yes, ma'am.

16 Q Did they ever explain to you why Wellpath
17 would not pay for more medical care?

18 MR. BERTLING: Lacks foundation. Calls for
19 speculation.

20 THE WITNESS: They told me that they would not
21 pay for it. That's all I know. First they blamed
22 it on Covid, then they said Wellpath is not going to
23 pay for it.

24 MS. HUANG: I have no further questions.

25 MR. BERTLING: Does anybody else have

1 questions?

2 MS. PETERS: I do not.

3 MR. REITMEYER: No.

4 MR. BERTLING: Okay.

5 Natie, we're just going to keep this
6 deposition open pending receipt of the documentation
7 that should have been provided. So I'm not going to
8 agree that it's closed at this point. Otherwise
9 we're done for this session.

10 And, Natie, if you could prepare a
11 transcript of today's proceedings, I'd appreciate
12 it.

13 THE COURT REPORTER: Okay. Anybody else need
14 copies?

15 MS. PETERS: Yes, please.

16 MS. HUANG: Ms. Alvarado, would you make sure I
17 get notified as well when copies are available?

18 THE COURT REPORTER: Yes.

19 MR. REITMEYER: We would like a copy and just
20 electronic is fine. And in addition to the formal
21 transcript, if we could get a mini I would really
22 appreciate that.

23 THE COURT REPORTER: Ms. Peters, digital for
24 you?

25 MS. PETERS: Yes, please. Thank you.

1 MR. REITMEYER: Thank you for your work today,
2 Natie. I know it was tough.

3 MR. BERTLING: Thank you. We're off.

4 MR. REITMEYER: Thank you, Mr. Mallett.

5
6 (Whereupon the deposition proceedings
7 adjourned at 1:00 P.M.)

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9 * * * *

1 STATE OF _____)

2 COUNTY OF _____)

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5 I, JAMES ERIC MALLETT, declare under penalty of
6 perjury that I have read the foregoing transcript and I
7 have made corrections, additions, or deletions that I was
8 desirous of making; that the foregoing is a true and
9 correct transcript of my testimony contained herein.

10

11

12 Executed this _____ day of _____, 2023

13 at _____, _____
14 City State

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JAMES ERIC MALLETT

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REPORTER'S CERTIFICATE

I, NATIE FLORES ALVARADO, Certified Shorthand Reporter, License No. 9016, do hereby certify:

That prior to being examined, the witness named in the foregoing Deposition (Volume 2), to wit, JAMES ERIC MALLETT, was by me first duly administered an oath to testify the truth, the whole truth, and nothing but the truth;

That said Deposition was taken at the time and place therein set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction;

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

Dated this 25th day of September, 2023.

NATIE FLORES ALVARADO

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1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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3
4 I, NATIE FLORES ALVARADO, CSR No. 9016, a
5 Certified Shorthand Reporter in an for the State of
6 California, certify that the foregoing Pages 133
7 through 225 constitute a true and correct copy of the
8 original Deposition of JAMES ERIC MALLETT, (Volume 2),
9 taken on September 18, 2023.

10
11 I declare under penalty of perjury, under the
12 laws of the State of California, that the foregoing is
13 true and correct.

14
15 Dated this 25th day of September, 2023.

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19 _____
20 NATIE FLORES ALVARADO, CSR
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